

**MINUTES
of the
FORTY-FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**July 24, 2013
Santa Fe, NM**

The forty-first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on July 24, 2013 at 9:15 a.m. in Room 322 of the State Capitol.

Present

Rep. Mimi Stewart, Chair
Sen. John M. Sapien, Vice Chair
Paul Aguilar, Deputy Secretary, Public
Education Department (PED)
Tom Clifford, Secretary, Department of
Finance and Administration
Dr. Carl Foster
Cecilia Grimes
Leonard Haskie
Robbie Heyman
Rep. James Roger Madalena
Rep. W. Ken Martinez
Mike Phipps
Sen. Cliff R. Pirtle
Sen. Sander Rue
Rep. James E. Smith
Sen. John Arthur Smith

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Roberto "Bobby" J. Gonzales
Rep. Sandra D. Jeff

Absent

Dr. Lisa Grover
Rep. Larry A. Larrañaga
Sen. George K. Munoz
Sen. Mary Kay Papen
Judy Rabon
Rep. Henry Kiki Saavedra
Sen. Benny Shendo, Jr.

Rep. Sharon Clahchischilliage
Sen. Howie C. Morales
Sen. John C. Ryan
Sen. William E. Sharer
Sen. William P. Soules
Sen. Pat Woods

Guest Legislator

Rep. Dennis J. Roch

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon Ball, Senior Researcher, LCS
Cassandra Jones, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, July 24

Representative Stewart welcomed members of the task force and the public. She asked task force members to introduce themselves and provide some brief background. She also asked guests to introduce themselves.

Interim Committee Procedures

Mr. Burciaga reviewed some interim committee procedures. He reminded task force members that some action, such as directing staff to conduct research, can be done informally by consensus of the task force, but formal action requires a formal vote by a majority of the task force. He also explained that task force members can meet as a special subcommittee under certain conditions, but the subcommittee would not be able to take any formal action.

Members of the task force asked questions about changes in task force membership and current vacancies. Mr. Burciaga noted that changes in legislative leadership have precipitated several changes to task force membership. He noted that the task force currently has three vacancies. He noted that Speaker Martinez has reappointed Ms. Grimes and Mr. Haskie and that President Pro Tempore Papen has reappointed Mr. Phipps and Mr. Heyman. He also noted that the New Mexico Legislative Council has appointed several new members and that the council must appoint three additional members in consultation with the governor. He said that council and leadership staff are working to find appropriate people to fill these positions. Task force members discussed the vacancies and individuals for consideration to fill them.

Public School Capital Outlay Primer and Brief Background Review of the PSCOOTF

Directing task force members' attention to handouts in their meeting folders, in particular a flow chart titled "Public School Capital Outlay Standards-Based Process", Ms. Ball explained that the PSCOOTF is required by statute to oversee the work of the Public School Capital Outlay Council (PSCOC). The PSCOC is composed of nine members and oversees the Public School Facilities Authority (PSFA). The task force is composed of 25 statutory members as well as additional advisory members.

Ms. Ball explained that responsibility for public school capital outlay funding in New Mexico is a shared responsibility among local districts and charter schools, along with the state. She explained that local capital outlay funding must be approved by school district voters and that the rate is calculated in "mills". She explained that a mill amounts to \$1.00 for every \$1,000 of taxable valuation of the property being taxed. She discussed several of the most used funding mechanisms, including the following:

1. the Public School Capital Improvements Act, also known as Senate Bill 9 or the "two-mill levy", which provides for the state to guarantee a minimal level of funding for districts whose voters agree to impose a two-mill levy on their property to support capital outlay. Ms. Ball noted that the act changed as a result of task force-endorsed legislation to ensure that every district that imposes the SB 9 levy receives at least a small amount of state funds. She noted that only six districts statewide do not use this funding mechanism;
2. the Public School Buildings Act, also known as House Bill 33, which allows a district to impose up to a 10-mill levy for a six-year period in order to fund public school capital outlay projects. This act is most beneficial for districts that have high per-student property taxes. If a district elects to use HB 33 funds, it can have a total levy of no more than 15 mills;
3. general obligation bonds, which allow for a school district to tax as much as is necessary, with voter approval, in order to pay off the bonds; and
4. Public School Capital Outlay Act funding, formerly called "critical capital outlay" funding, provides for state funding of school district capital outlay needs that cannot be met after a district has used other sources of funding. Ms. Ball explained that this funding mechanism has been amended extensively over the past 12 years to establish a standards-based process in order for the state to comply with the judge's order in the *Zuni* lawsuit. She noted that, in the next presentation, Mr. Burciaga would explain issues related to the *Zuni* lawsuit.

Ms. Ball told the task force that in previous years, the task force endorsed legislation to allow school districts and charter schools to receive lease payments for buildings that they are leasing. Lease assistance amounts to approximately \$700 per student, adjusted by a Consumer Price Index adjustment. Ms. Ball indicated that the PSCOC would present to the PSCOOTF at the next meeting regarding fiscal year (FY) 2014 capital outlay awards, including lease payment awards. Ms. Ball explained that because direct appropriations to school districts have a disequalizing effect, the Public School Capital Outlay Task Force, a predecessor of the PSCOOTF, endorsed legislation that was enacted by the 2003 legislature to require that an offset be applied against the state share of funds awarded to a school district by the PSCOC for all capital outlay projects.

Members of the task force asked questions about and discussed charter school authorizations; constitutional bonding requirements; HB 33 and SB 9 funding; lease assistance; PSCOC awards; the Partnership for Assessment of Readiness of College and Careers; and voter approval for bonds.

Review of the *Zuni* Lawsuit

Mr. Burciaga told the task force that in 1974, the New Mexico Legislature was one of the first in the nation to adopt a school financing system for operational expenses that provided funding for public education based on an equalized formula rather than on local property taxes. This became a national model of equitable school finance and was based on a studied, deliberate effort to create an equitable system. Mr. Burciaga told the task force that around 10 years ago, lawsuits challenging state financing of public schools had been brought in 45 of the 50 states, most of which were aimed at breaking the tie between local property wealth and school funding, something that New Mexico had done 40 years ago. Early on, many of these cases were based on the concept of equity; however, it was argued that successful finance lawsuits did not translate to success in the classroom, partly because by weaning the school funding system from its dependence on local property wealth, less money overall was spent on education. The argument that "equity" failed to achieve results shifted the focus to "adequacy" for specific education results. More than one-half of the states have conducted adequacy studies trying to determine what it would cost to bring the majority of students up to a specific level of performance.

Mr. Burciaga reminded the task force that Article 12, Section 1 of the New Mexico Constitution provides that a "uniform system of free public schools sufficient for the education of, and open to, all children of school age in the state shall be established and maintained". New Mexico courts have not yet specifically construed the meaning of "uniform" or "sufficient" in this constitutional provision. While New Mexico had addressed program funding for schools, it had not addressed capital funding, which remained largely dependent on property wealth. In addition, because the state could take credit for 95 percent of impact aid funding, which is federal funding provided to school districts in lieu of property taxes for children living on tribal and federal lands, the affected districts were left with only five percent of impact aid funds for capital expenses. Thus, the equalization of operating funds had resulted in an unequal effect on capital funding for districts with little taxable property.

Mr. Burciaga told the task force that a 1998 study of conditions of New Mexico school facilities determined that there was a capital outlay deficiency of \$1.5 billion statewide for public schools. The Zuni Public School District, which had been unsuccessful in obtaining direct legislative appropriations for capital expenditures, raised the question of whether the capital system, based on local property wealth, violated the state constitution's promise for a uniform system for public schools. The school filed a lawsuit on the premise that the state's financing of public schools violated the rights under the New Mexico and U.S. constitutions. The Zuni Public School District was subsequently joined by two nearby school districts, Gallup-McKinley County and Grants-Cibola County school districts.

State District Court Judge Rich granted the school districts' motion for partial summary judgment and ordered the state to "establish and implement a uniform funding system for capital improvements" as well as to correct "existing past inequities". The state created the Public School Capital Outlay Task Force to design a new capital financing system. The task force chose adequacy as its guiding principle. "Adequacy" was defined as the minimum acceptable level for the physical condition and capacity of school buildings, the educational suitability of educational facilities and the need for technological infrastructure.

In 2001, Senate Bill 167, which covered short-term deficiencies and long-term critical capital outlay needs, passed the legislature. Public school capital outlay projects would "be shared between the state and local districts on a formula basis", with awards granted to school districts based on statewide adequacy standards. At the request of the *Zuni* lawsuit parties, Judge Rich appointed a special master to conduct a review of the state's progress in developing a new capital outlay program for public schools. Dan McKinnon, a former New Mexico Supreme Court judge, was appointed special master. The special master issued his report and stated that the legislature had passed "one of the most dramatic actions ever taken by the state to remedy disparities of capital funding". He endorsed most of the task force's views on adequacy versus equity but also stated that the direct capital appropriations were in conflict with uniformity. He indicated that the legislature was operating in good faith, and more time was needed to see how the process developed. Judge Rich ordered that the report of the special master be approved. Mr. Burciaga told the task force that no further review of the *Zuni* lawsuit has occurred.

Members of the task force discussed and asked questions about adequacy standards; property taxes; the *Zuni* lawsuit; adequacy standards for charter schools; the Severance Tax Permanent Fund (STPF); and present-day adequacy issues for specific schools.

PSCOC FY 2012 Annual Report and FY 2013 Strategic Initiatives

Bob Gorrell, director, PSFA, told the task force that the PSCOC has been working to move toward smaller gross square footage in schools in order to minimize construction and long-term maintenance expenses. He stressed the importance of maintenance because it is less expensive to maintain a facility through a planned preventive maintenance program than to make repairs in emergency situations. He told the task force that school district investments in preventive maintenance as a percentage of total maintenance expenditures are at 17.86 percent, a 2.3 percent decline from 2011. According to the Facility Information Management System global data, studies indicate that every \$1.00 invested in preventive building maintenance can eliminate up to \$3.00 in maintenance expenditures overall.

Tim Berry, deputy director, PSFA, told the task force that a small number of school districts have been assessed so far for maintenance effectiveness. He stated that the PSFA is actively trying to increase staff in order to do maintenance assessments in school districts. Mr. Berry gave the task force information about this history of the PSCOC. In FY 2012, standards-based capital outlay awards totaled \$122.45 million for 60 school construction projects in 25 districts. This number represents a 6.7 percent increase over the awards of FY 2011.

Mr. Berry told the task force that the PSFA's operating budget is statutorily limited to five percent of the average of the previous three years' public school capital outlay awards. The PSFA's current budget is 3.6 percent of that average. He told the task force that lease payment assistance has increased annually at an average of 21.9 percent, with a 440 percent increase overall. In FY 2012, the PSCOC awarded \$10.8 million for lease assistance to 83 charter schools and seven public schools in 43 districts. The New Mexico Legislature has mandated that all charter schools be in publicly owned buildings by FY 2015.

Members of the task force asked questions about and discussed the cost of projects; project managers; how construction affects market cost; average gross square feet per student; quality of facilities; districts that have a difficult time raising revenues for school facilities; standards for facilities maintenance; the value of vacant schools; how the Facilities Condition Index (FCI) is calculated; avenues to receive funding to build teacherages as well as the importance of having teacherages to attract employees in rural areas; and the cost of insuring schools.

Representative Stewart requested that the PSFA provide a review of the adequacy standards as well as the FCIs of various schools to the task force at a future meeting. The task force members requested that the Public School Insurance Authority be invited to present on insurance rates for schools at a future meeting.

Discussion of PSCOOTF Work Plan, Items for Future Agendas and Other Organizational Business

Task force members discussed the work plan and possible topics of discussion for future meetings. Members of the task force suggested topics such as:

- a review of the FCI and adequacy standards with specific examples;
- a review of the cost of insurance and its correlation to facility conditions;
- information about the STPF;
- state funding for teacherages;
- new considerations for construction, such as solar and geothermal energy; and
- the consolidation of school districts.

Representative Stewart thanked the task force members for their ideas and assured them that the ideas would be taken into consideration when planning future agendas.

On a motion by Dr. Foster, seconded by Senator Rue, the task force voted unanimously to approve the PSCOOTF work plan for the 2013 interim.

Adjournment

There being no further business to come before the task force, the forty-first meeting of the PSCOOTF adjourned at 12:45 p.m.